

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAMES FLETCHER JR.,

Plaintiff,

vs.

JEROME BOGUCKI, ANTHONY NORADIN,
RAYMOND SCHALK, ANTHONY WOJCIK,
UNKNOWN CITY OF CHICAGO POLICE
OFFICERS, and the CITY OF
CHICAGO,

Defendants.

No. 20 CV 4768

Chicago, Illinois

January 24, 2024

10:00 a.m.

TRANSCRIPT OF PROCEEDINGS - TELEPHONIC STATUS HEARING

BEFORE THE HONORABLE ANDREA R. WOOD

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1 (Proceedings heard via telephone:)

2 THE CLERK: Calling the next case, 20 CV 4768,
3 Fletcher, Junior versus Bogucki, et al., for status.

4 MR. STEFANICH: Good morning, Your Honor.
5 Brian Stefanich for the individual defendants.

6 THE COURT: Do we have plaintiff's counsel?

7 MR. STARR: Yes, Your Honor. Sean Starr on behalf of
8 plaintiff's counsel.

9 THE COURT: Thank you.

10 MR. MICHALIK: And Paul Michalik on behalf of
11 defendant City of Chicago.

12 THE COURT: Thank you.

13 And I believe the pending motions implicate the
14 interests or at least the involvement of the Cook County
15 State's Attorney's Office as well as the IDOC. I just want to
16 make sure that if we have somebody on the line for those
17 entities that they make an appearance as well.

18 MR. LARIOS: Good morning, Your Honor.

19 Assistant State's Attorney Miguel Larios on behalf of
20 the Cook County State's Attorney's Office.

21 THE COURT: Thank you.

22 And then I take it we do not have anybody
23 representing the IDOC with respect to the subpoena.

24 There's a motion by the plaintiff to quash a subpoena
25 or for a protective order with respect to a subpoena for a

1 third party's recorded calls that's been fully briefed.

2 I assume that we don't have anybody other than
3 plaintiff's counsel and defense counsel who are present for
4 purposes of that motion. Is that fair to say?

5 MR. STARR: Yeah, that's plaintiff's impression as
6 well.

7 THE COURT: And, to be clear, the third party whose
8 calls are being sought is Mr. Woodland.

9 Do the parties have any reason to believe that
10 Mr. Woodland or anybody acting on his behalf was hoping to
11 participate in the hearing today?

12 MR. STARR: This is plaintiff's counsel, Sean Starr,
13 Your Honor.

14 We had previously spoken to Mr. Woodland and informed
15 him that the subpoena had been tendered to IDOC and the calls
16 had been erroneously produced, and he indicated that he
17 objected.

18 We asked if he had counsel, and he said he did not
19 have counsel. He suggested that he was going to write a
20 letter to the Court, but that is the extent of the
21 communication we had with him.

22 THE COURT: And he is still in custody; is that
23 correct?

24 MR. STARR: That is correct.

25 THE COURT: At which facility is he currently housed,

1 if you know?

2 MR. STARR: It's Illinois River, Your Honor.

3 Sorry. It took me a moment.

4 THE COURT: That's fine.

5 So I did not see any letter or other submission from
6 Mr. Woodland on the docket. I suppose it's possible that he
7 might have attempted to send something to counsel in the case.

8 From your statements just a moment ago, I take it
9 that plaintiff's counsel, Mr. Starr, you and your colleagues,
10 have not received any submission from Mr. Woodland in an
11 effort to get it to me on this motion?

12 MR. STARR: We have not, Your Honor.

13 THE COURT: And then what about the individual
14 defendants' counsel? Have you received anything, perhaps a
15 letter either objecting to the production, or something
16 directed towards me?

17 MR. STEFANICH: No, Your Honor.

18 THE COURT: Okay. Well, I don't have anything. I
19 suppose, with the pace at which mail sometimes moves, it's
20 conceivable that something is in transit, but with the
21 briefing of this matter being completed on the 11th of this
22 month, I have to assume that if Mr. Woodland desired to send
23 something in that I would have it by this time.

24 Okay. Let me address some issues with respect to the
25 state's attorney's office, and then I have a couple of

1 questions with respect to the subpoena for Mr. Woodland's
2 documents, and, hopefully, we can get those matters resolved.

3 First and foremost, just to confirm, the unredacted
4 felony review folder was produced to the parties from the
5 state's attorney's office; is that correct?

6 MR. LARIOS: Yes, Your Honor.

7 This is State's Attorney Miguel Larios.

8 MR. STEFANICH: That's correct, Judge.

9 THE COURT: And so, in those materials, do those
10 materials address or otherwise confirm the extent of the
11 involvement of the two ASAs that the individual defendants are
12 seeking to depose?

13 And I suppose that's a question directed towards
14 defense counsel.

15 MR. STEFANICH: Sure, Judge.

16 So the felony review folder was drafted by a
17 different ASA, ASA Jennifer Walker. The two ASAs that we're
18 seeking to depose that are the subject of this motion are ASA
19 Giancola and ASA Bowden.

20 So we received in discovery a document from the
21 state's attorney's office that ASA Giancola drafted that was a
22 memo to her supervisors after Mr. Fletcher's case was sent
23 back to state court after it was granted habeas relief. And
24 that memo is partially redacted with her recommendation on
25 whether to retry Mr. Fletcher or dismiss the charges.

1 Obviously, the charges were ultimately dismissed. So that's
2 ASA Giancola.

3 ASA Bowden is the state's attorney who represented
4 the state in Mr. Fletcher's Certificate of Innocence
5 proceeding, so all we have really on ASA Bowden is her
6 appearance at that hearing and some emails between her and
7 plaintiff's counsel essentially scheduling the hearing.

8 At the Certificate of Innocence hearing, ASA Bowden,
9 representing the state, took no position on Mr. Fletcher's
10 petition for a Certificate of Innocence. So, for that
11 deposition, we don't know if she was the ultimate
12 decision-maker for the state's position, but she's the only
13 person from the record that we know was at least involved.

14 THE COURT: And do you have any reason to think that
15 either two of the individuals you're seeking to depose were
16 personally involved in interviewing any witnesses or otherwise
17 involved in fact gathering in support of either the decision
18 whether to retry Mr. Fletcher or the decision on whether to
19 oppose his petition for a Certificate of Innocence?

20 MR. STEFANICH: So I know that my clients, the
21 detectives, were never interviewed when those decisions were
22 being made. So that's what I know.

23 I guess I have some assumptions on how the state's
24 attorney's office generally conducts reviews for Certificates
25 of Innocence, but I don't know that for sure. Those are just,

1 I guess, my assumptions.

2 THE COURT: And where I'm heading with that question
3 is that it seems to me that any opinions or views held by
4 these two individuals on whether Mr. Fletcher is actually
5 innocent is really irrelevant and that the only thing that
6 would be relevant here is if they have actual facts in their
7 possession or are aware of facts that show that he was
8 actually innocent or that somebody else committed the offense
9 or that, presumably, any information that they relied upon to
10 support their decision has been produced in one format or
11 another.

12 So what I'm focusing on is the distinction here
13 between factual information gathered over the course of either
14 the original investigation or in connection with the decision
15 whether to retry him or oppose the Certificate of Innocence as
16 opposed to just an opinion that they may have on whether he
17 actually did it or didn't do it.

18 Do you believe that there is factual information that
19 was gathered in connection with either preconviction or post
20 conviction activities by the state's attorney's office that
21 you would obtain through these two depositions?

22 MR. STEFANICH: I would say factual information,
23 Judge, yes, but I would also qualify that as factual
24 information, to me, includes what wasn't done.

25 So, for example, in the Certificate of Innocence

1 proceeding, if the state's attorney's office didn't interview
2 a single witness, didn't review the record, didn't interview
3 the victims, didn't gather information from the Conviction
4 Integrity Unit of the state's attorney's office which did
5 interview the victims, I think that would be relevant.

6 THE COURT: Why?

7 I have a hard time seeing why that's relevant.

8 MR. STEFANICH: Sure. Because we are going to have
9 to explain why the Certificate of Innocence was entered, why
10 Mr. Fletcher has this Certificate of Innocence.

11 THE COURT: But that wasn't the decision of the
12 state's attorney's office; that was the decision of the judge.

13 MR. STEFANICH: Sure, but the state's attorney's
14 office didn't object. They took no position. So, generally,
15 when the state's attorney's office takes no position, it's
16 essentially a proforma order that the judge enters. There's
17 no adversary proceeding.

18 THE COURT: Okay. Let me hear from Mr. Larios. And,
19 first of all, the papers are a bit vague as to what these to
20 ASAs actually know about the case. And I think, in the
21 response brief, there's a suggestion that they -- at that time
22 that that was filed -- I know that was back in maybe the fall
23 when the reply was filed -- there was a suggestion that the
24 two ASAs had not been interviewed by counsel in connection
25 with this briefing to know the full extent of their knowledge.

1 Do you know whether they were involved in any fact
2 gathering in connection with the office's decision-making?

3 MR. LARIOS: Your Honor, this is Miguel Larios.

4 I have included my colleague Paul Fangman who did the
5 briefing on this motion, so I'll defer to him.

6 MR. FANGMAN: Good morning, Your Honor. This is
7 Assistant State's Attorney's Paul Fangman. I just joined the
8 call a little late. I apologize.

9 THE COURT: Thank you.

10 MR. FANGMAN: Thank you.

11 I just heard your questions of Counsel and his
12 answers, and when we filed our motion to quash the subpoenas,
13 we looked at the docket information for ASA Toni Giancola and
14 ASA Christa Bowden, and from what we could see, there were no
15 filings made in this, that one of the ASAs simply appeared in
16 court on the day that the Certificate of Innocence was granted
17 and stated to the judge that the state's attorney's office had
18 no position.

19 So there's no information in the record anywhere that
20 the ASAs did any fact gathering. There's nothing that's
21 filed. There's no information about interviews that were
22 conducted. There's nothing to show that any interviews were
23 conducted.

24 In the absence of any record that shows that there
25 was -- there's no paper at all. I guess it would be hard to

1 show that there was any fact gathering that took place if
2 there's no evidence of it.

3 If counsel has not -- in all of the document
4 subpoenas that they've issued and received documents from our
5 office, there's no record. There's no paper record anywhere
6 that any additional work was done in connection with the
7 statement that the state's attorney's office takes no
8 position. So I guess that's the answer to the inquiry is that
9 nothing happened as far as we know.

10 THE COURT: And so --

11 MR. STEFANICH: Judge, if I could just clarify.

12 THE COURT: Just one quick question.

13 Are the two attorneys still with the state's
14 attorney's office?

15 MR. FANGMAN: I believe they were at the time we
16 filed the motion. I would have to check to see at this point.

17 MR. STEFANICH: Judge, I know ASA Bowden from another
18 case. I know that she is no longer with the office. ASA
19 Giancola is still with the office.

20 A point of clarification on the fact-gathering
21 question.

22 I did mention that memo that ASA Giancola drafted to
23 her superiors, so it does seem like she gathered some facts.
24 She doesn't cite to -- there's no, like, legal citations or
25 record cites or anything like that in the memo, but it appears

1 like she's looking at something. I don't know if she's just
2 looking at the trial file or the habeas petition or the post
3 conviction petitions or what or if she interviewed witnesses
4 or if she got the CIU file, but she does have a memo where
5 she's discussing the facts of the case and ultimately making
6 the recommendation that she made.

7 THE COURT: So, Mr. Larios, to the extent that either
8 of these attorneys actually interviewed witnesses in order to
9 make a recommendation on whether or not the office should, for
10 example, retry Mr. Fletcher or oppose the Certificate of
11 Innocence, would you agree that what the attorneys were told
12 during those interviews would be discoverable and would be an
13 appropriate thing for them to have to testify about during a
14 deposition?

15 MR. FANGMAN: Yes. This is Attorney Fangman.

16 Yes, Your Honor, you're right. If either of those
17 ASAs interviewed any witnesses and asked fact-based questions
18 and there was any record of the responses, the answer to your
19 hypothetical question would be yes.

20 I would just repeat I don't believe that they did.
21 And that's just my personal opinion. I know that there's no
22 record that they did.

23 THE COURT: And why not just ask them?

24 I guess that's why I'm a little perplexed by it.

25 Certainly the one who is still employed at the

1 office, Giancola, why would you not just ask the attorney,
2 "What did you do? Did you do any fact finding?" So that
3 you're not having to guess at it?

4 MR. FANGMAN: I can certainly do that. We've not
5 been issued -- that's not what Counsel was seeking. They were
6 seeking a deposition basically as we're talking about now. So
7 if that's what the Court is directing, I can ask those
8 questions of those two ASAs.

9 THE COURT: Because it seems to me that not
10 everything that is reasonably likely to be within their
11 knowledge would be covered by a privilege. And I think you
12 just confirmed that by acknowledging that if they actually
13 went out and maybe they re-interviewed a witness in connection
14 with the decision on whether to retry Mr. Fletcher, which
15 seems like a reasonable thing that you might do, given that
16 the information gathered through that process would seem to be
17 an appropriate deposition topic, even if I think you're right
18 as to other things such as the specific reasons why the office
19 decided not to retry Mr. Fletcher, I would think it would be
20 much more efficient to gather that information or at least
21 find out if such information exists as opposed to having the
22 witness sit for a deposition just to answer those questions.
23 Or, put differently, as it stands now, not knowing whether
24 there's any factual information of that sort in the possession
25 of these witnesses, I might be inclined to say, you know, the

1 defendants get to depose them to ask whether they have any of
2 that information. But it seems to me that that would not
3 necessarily be a very productive use of anybody's time and
4 resources if some sort of confirmation can be obtained
5 indicating that that sort of information does not exist.

6 MR. FANGMAN: I agree with you, Your Honor.

7 And just to clarify, certainly any interviews that
8 the ASAs conducted, just like in post conviction processes, if
9 they went out -- if investigators went out and conducted
10 interviews and collected facts, our office would not typically
11 assert deliberative process privilege or be able to. So if
12 the ASAs conducted interviews with witnesses, we would not
13 assert any -- typically assert any deliberative process
14 privilege.

15 I believe what the briefs in this motion to quash
16 proceeding have focused on is the documents that the ASAs sat
17 at their desks and reviewed, the conversations that they had
18 with their coworkers. And we certainly would and have
19 asserted deliberative process privilege for the inputs into,
20 let's say, the ASAs' brains when they make that determination
21 or put together that memo.

22 Their own deliberations we would always assert are
23 privileged, but certainly I can ask those questions and report
24 back. If they conducted any fact-based interviews, again,
25 there's no record of them, so the assumption has to be that

1 they didn't, but I certainly can ask those questions.

2 THE COURT: To the extent the individual attorneys
3 were aware of facts demonstrating who actually committed the
4 murder, whether it's facts showing that Mr. Fletcher is
5 innocent or facts showing that he is guilty, would you
6 consider that to be something covered by the deliberative
7 process privilege?

8 MR. FANGMAN: Yes, Your Honor, because the ASAs
9 certainly are aware of facts in the case in their entirety;
10 and asking an attorney their knowledge of facts necessarily
11 involves which facts went into their decision and why and what
12 the order was and what the importance was.

13 So, I mean, I think you can -- obviously, we can all
14 expect that they knew all of the facts that were necessary.

15 THE COURT: And I don't necessarily think this is
16 what the individual defendants are planning to do if they're
17 allowed to take the deposition, but, hypothetically, if they
18 were to ask a question at a deposition, "In your review of the
19 case file or otherwise, are you aware of any other person who
20 confessed to the killing," would that be subject to the
21 deliberative process privilege?

22 It might be objectionable for other reasons. You're
23 asking somebody to remember everything in the record,
24 et cetera, but just in terms of the privilege issue, would
25 there be an objection to a question along those lines, in

1 other words, "Are you aware of anyone who was interviewed in
2 connection with this matter who confessed to the killing?"

3 MR. FANGMAN: I think that the parties can find out
4 that information in a myriad of other ways and not asking
5 those questions of the ultimate decision-makers or the people
6 that were involved in relaying the decision to the Court.

7 I think any time you ask "Were you aware of this
8 fact" or "Were you aware of that fact," again, these are not
9 fact witnesses; these are attorneys that are reviewing the
10 files. So if there is evidence that somebody else committed
11 the crime or confessed, that evidence would come from the
12 actual, you know, witness or statement or records. And I
13 believe that defendants already have all of that information.

14 THE COURT: Yes, certainly in terms of admissibility,
15 it might come from the actual witnesses. I suppose the
16 question one might have is how do they know who they should be
17 looking at or interviewing as a potential witness.

18 What is the exact objection to identifying who the
19 ultimate decision-maker was with respect to the decision to
20 not oppose the Certificate of Innocence?

21 MR. FANGMAN: I think that that issue has been
22 litigated, I think, in some other proceedings by my
23 supervisors. I think that the general objection has always
24 been that the deliberative process privilege covers the
25 decisions and the decision-makers.

1 THE COURT: So, for example, is there an objection to
2 describing, in general, this is a decision that is signed off
3 on by the state's attorney based on a recommendation from the
4 ASA who reviews the file or however -- I guess I'm curious as
5 to the basis for a general procedure which I'm going to assume
6 is a procedure that's in place for all or most cases that are
7 being reviewed at that stage where habeas relief has been
8 granted.

9 Why is that a deliberative process concern, just what
10 the procedure is?

11 MR. FANGMAN: Because that goes into the
12 deliberations. And I think, just generally speaking, the more
13 fine tuned the parties get into this process, the more
14 pressure is placed on the individuals or could be placed on
15 the individuals to determine the outcome.

16 I suspect we've filed the affidavits and we've
17 asserted the deliberative process privilege for the purpose of
18 avoiding influence in the process, the deliberations of
19 whether to prosecute or not. And I think as we fine tune that
20 and everyone gets fine tuned more into each step of the
21 process, there's more opportunity for the parties to be -- for
22 the state's attorney's office to -- for attempts to influence
23 the decisions of our office.

24 THE COURT: It's very common, in fact, required
25 typically when people assert a privilege and they prepare a

1 privilege log you identify who was involved in communications.

2 I've received privilege logs from a variety of
3 government agencies over the years where they've asserted the
4 deliberative process privilege and they identify who was
5 involved in the particular communication over which the
6 privilege is being asserted; and you're suggesting that even
7 just identifying the people involved even by their position
8 would have a chilling effect or otherwise undermine the goals
9 of the deliberative process privilege?

10 MR. FANGMAN: I think that is the argument our office
11 has put forth. And I guess I don't recall exactly the memo
12 that Counsel references, but, typically, if ASA Bowden wrote a
13 memo, we would generally produce the redacted memo, and it
14 would show who she sent the memo to. We've always produced
15 that.

16 We've always -- if there's a memo that's written, we
17 produce the names of who it went to, the date, the person who
18 wrote it, and then we redact the memo. So, in this case, I'm
19 assuming we did produce that already and counsel already has
20 that information.

21 THE COURT: Okay. Thank you.

22 Mr. Stefanich, I wanted to give you a chance to
23 respond to any of that that you'd like to briefly, please.

24 MR. STEFANICH: Yeah. So, to clarify, again, I think
25 it's two separate things. One, for ASA Giancola, we do have

1 that memo, and we do know who that memo was sent to. That
2 portion of the memo wasn't redacted.

3 For ASA Bowden and the Certificate of Innocence
4 proceeding, we don't have any privilege log or correspondence
5 or redacted correspondence to ASA Bowden or from ASA Bowden
6 indicating who was directing her to take no position for the
7 office or anything like that. So we don't have that
8 information. We don't think that's covered by the
9 deliberative process.

10 The ultimate decision-maker, I think, is a factual
11 matter. At least from the individual defendants' point of
12 view, there's no undue influence, at least for the defense,
13 because we don't even know -- the defendants don't even know
14 this is happening. Right? We don't know that habeas relief
15 is granted, so we wouldn't even know -- the defendants
16 wouldn't even know that there's a potential that the case
17 would be vacated. They're just unaware of what's happening on
18 20-year-old cases.

19 So I think that's my response to those questions.

20 THE COURT: One quick question for you.

21 So are you concerned that you don't actually have all
22 of the factual information from the underlying investigation
23 either pre or post conviction that would either be exculpatory
24 or inculpatory for Mr. Fletcher?

25 MR. STEFANICH: I think we have everything for the

1 conviction -- the Conviction Integrity Unit process. And then
2 I think we have everything for the decision. It's redacted,
3 but I think the memo is the only document that would exist for
4 the decision to not retry Mr. Fletcher.

5 We don't have -- we really don't have anything except
6 the transcript and a couple of emails to and from counsel and
7 ASA Bowden about the Certificate of Innocence proceeding, so I
8 don't know if there's anything that exists.

9 My understanding -- so I don't know if there's
10 anything else that exists. Obviously, somebody had to tell
11 ASA Bowden to take no position, but I don't know if there
12 would be documents of that. I don't know if the process is
13 similar to the process when you're going to nolle a case where
14 there would be a memo or if it's just an oral communication.
15 I don't know.

16 THE COURT: Thank you.

17 Mr. Starr, I don't know the plaintiff's view on all
18 of this. The briefing has taken place between the individual
19 defendants and the state's attorney's office.

20 Do you want the ability to question these witnesses
21 at a deposition? Are you supportive of the individual
22 defendants' efforts?

23 MR. STARR: As we indicated in our response to the
24 motion to quash, we are not taking a position on that.

25 The only thing that we stated in our motion is that

1 we intend -- we don't intend to introduce any evidence about
2 why the Cook County State's Attorney chose not to reprosecute
3 plaintiff or any information about their decision about why
4 they chose to -- their decision regarding the Certificate of
5 Innocence.

6 The only thing that we intend to introduce would be
7 that he wasn't reprosecuted and that he got his Certificate of
8 Innocence. And so we're going to stand down on whether or not
9 these individual ASAs should be deposed in this case.

10 THE COURT: Why would it be relevant that he wasn't
11 reprosecuted, given that he has a Certificate of Innocence?

12 So I appreciate that an element that has to be proved
13 here is that the matter was terminated in a manner favorable
14 to him and indicative of innocence. I think the Certificate
15 of Innocence speaks to that element, but why is the decision
16 whether or not to reprosecute something that you think you
17 should be able to admit at trial?

18 MR. STARR: I think because of the reason you just
19 outlined, Your Honor. I mean, I think it is an element of the
20 Certificate of Innocence, and our intention would be to
21 introduce the COI into evidence at trial.

22 And so other than that, the habeas decision exists as
23 it does, and after that, the state chose not to retry that.
24 That decision, I think, is an element of the Certificate of
25 Innocence. There was no retrial. There was no decision by

1 the state's attorney to continue the case.

2 THE COURT: And do you expect that part of what
3 you'll be seeking to prove at trial is actual innocence, given
4 that it's one of the things that might impact the damages that
5 your client's entitled to?

6 MR. STARR: That's correct.

7 THE COURT: I'm going to leave that issue for a
8 moment and then turn to the issue of the recordings involving
9 Mr. Woodland and touch on it briefly because I do have other
10 status hearings where the parties are waiting patiently for
11 their turn this morning.

12 And this is plaintiff's motion. I'm having a hard
13 time seeing how the plaintiff has standing to assert a privacy
14 interest on behalf of Mr. Woodland. I'm also having a hard
15 time seeing how plaintiff can assert that this is an extremely
16 burdensome request given that, as I understand it, the
17 subpoena has now been narrowed to just seeking the 109 calls
18 to the three other individuals.

19 Is there anything that wasn't in your brief that you
20 would want to add on either of those points, Mr. Starr?

21 MR. STARR: Sure, Your Honor.

22 I think the thrust of our brief is not so much
23 Mr. Woodland's privacy, though we do address that. You know,
24 the idea that these calls are surreptitiously -- actually, the
25 calls with Mr. Fletcher suggest that Mr. Fletcher's privacy

1 could, in fact, be at issue here. We don't think that these
2 are Mr. Fletcher's calls --

3 THE COURT: Yes, but you didn't make that argument,
4 and you certainly could have. If you knew that to be the case
5 from your client, you certainly could have argued, by the way,
6 rightly or wrongly, he was actually using somebody else's
7 phone privileges. And so this is indirectly getting to his
8 conversations, but you didn't argue that.

9 MR. STARR: Right. And I think we did in our reply
10 state that these are not his calls, but it's also -- when
11 someone's incarcerated for that length of time, to question
12 them about every single phone call they made and whose
13 credentials they used, if they were always their own, you
14 know, it strains their memory.

15 And so that's the only point that I would make in
16 regards to Mr. Woodland's privacy other than what I've already
17 previously mentioned is that Mr. Woodland told us that he
18 objected and that he did not want his calls being reviewed by
19 any third parties, which, you know, he doesn't have an
20 attorney, he hasn't obviously sent a letter to the Court, as
21 we established.

22 Regarding the burdensome part of it, you know, I can
23 just tell you anecdotally, yesterday, we had a deposition in
24 this case, and it was a witness who you had previously granted
25 the defendants access to plaintiff's calls with.

1 There's 13 calls to this witness. I personally spent
2 10 hours reviewing these 13 calls, and during the deposition,
3 they asked about 30 seconds of those seven-plus hours of phone
4 calls. And that was all they used, and it wasn't even a
5 relevant question.

6 We think that given the fact that there's a month
7 left in discovery, the idea that we have to review some third
8 party's calls who did not show any relevance at all in our
9 opinion, it just is not proportionate to the needs of the
10 case, Your Honor.

11 THE COURT: So with respect to Mr. Woodland's
12 possible desire to not have his calls produced, which I do
13 have some sympathy for, he was incarcerated. I assume that
14 he, like all prisoners, are informed that their calls are
15 subject to being recorded unless they're attorney-client
16 calls. There's no expectation of privacy. I would assume
17 that he's been advised of that. There might even be signs
18 posted, or it might be in the inmate handbook.

19 And I do think, as narrowed to just these three
20 individuals, Mr. Fletcher, Senior; Ms. Sanders; and LDub and
21 limiting it to 109 calls as opposed to the thousands that
22 plaintiffs reference in the motion to quash -- or I guess
23 maybe it's a motion for a protective order technically rather
24 than a motion to quash, styled as a motion to quash -- it
25 strikes me as less of just a fishing expedition as limited to

1 these individuals.

2 I appreciate that Mr. Fletcher, Senior was one of the
3 individuals for whom I'd previously said calls would not need
4 to be produced between him and the plaintiff here; however, it
5 sounds like subsequent deposition testimony and other
6 investigation have suggested that Mr. Fletcher may have had a
7 role in advancing his son's claimed innocence. And it is at
8 least noteworthy that he had such significant, in terms of
9 length, conversations with Mr. Woodland. And the fact that
10 Mr. Woodland or at least somebody using his privileges had so
11 many calls with Ms. Sanders also, I think, is a matter of
12 interest.

13 So I am inclined to allow the production of the 109
14 calls limited to just those calls with just those three
15 individuals, but I am concerned by the fact that Mr. Woodland
16 hasn't had an opportunity to weigh in here.

17 Is there any particular reason why the defendants
18 didn't try to notify Mr. Woodland that this was being sought
19 or otherwise, you know, give him an opportunity to weigh in
20 since he would seem to have privacy interests, to the extent
21 there are any, that are implicated?

22 MR. STEFANICH: Sure, Judge. I think the thought
23 process was twofold. One, we don't think there is a privacy
24 interest. I think Your Honor is 100 percent right that the
25 Offender Orientation Manual which we attached as an exhibit at

1 Stateville, which is where Mr. Woodland was incarcerated,
2 notifies the inmates that their calls are recorded. There are
3 signs by the phones that indicate that the calls are being
4 recorded. And then, you know, when we listened to
5 Mr. Fletcher's calls, at the beginning of every call, there's
6 a prerecorded statement indicating that the calls are being
7 recorded. So, you know, we don't think there's a privacy
8 interest in the calls that inmates have in these recorded
9 calls.

10 And, secondly, Judge, we think Mr. Fletcher is on the
11 calls and not Mr. Woodland, so that's -- I guess that's the
12 reason. That was our reasoning.

13 THE COURT: And I don't know if that's the case.

14 Look, I think that the proffer that's been made
15 regarding the involvement of both LDub and Red Dog in
16 Mr. Fletcher's case provided at least some basis to think that
17 this isn't just a fishing expedition.

18 The fact that Ms. Sanders indicated that she barely
19 knew Red Dog but yet I think there were 42 calls or something
20 along those lines from the person that is now believed to be
21 Red Dog, Mr. Woodland, to Ms. Sanders, given the fact that
22 Mr. Woodland was involved in actually filing FOIA requests in
23 order to obtain information, it certainly seems like there's
24 enough involvement here involving these individuals to support
25 a narrowed request for the calls.

1 Even though it's the responding party who has
2 standing to object to the burdensomeness of a subpoena, I do
3 think proportionality concerns are always something that
4 should be considered.

5 The original scope of the subpoena which I understand
6 would have covered all of the calls I do think is far too
7 overbroad.

8 I do think the offer to limit it to 109 calls for
9 these between Mr. Woodland or a person using his credentials
10 and these other three individuals is a reasonable place to
11 draw a line, so I am going to go ahead and deny the motion to
12 quash with that narrowed scope and noting that to the extent
13 it would have been my preference perhaps for Mr. Woodland to
14 have received a more formal notification of the subpoena and
15 opportunity to weigh in, he did have actual notice of the
16 subpoena and the objection that was being raised. And, in any
17 case, his privacy interests in these calls is lessened by the
18 fact that these are recorded prison calls.

19 And given the narrower scope and the issues that have
20 been raised about whether it's actually him on all the calls,
21 I don't know whether that's the case or not, but I think
22 that's enough to satisfy me that it's appropriate to move
23 forward and to allow the production. So I'm going to deny
24 plaintiff's motion to quash.

25 On the motion to quash the deposition subpoenas, I'm

1 going to, for the moment, take it under advisement and issue
2 an order but say this.

3 I expect the order that I issue is going to say some
4 things are covered by a privilege and can't be asked of these
5 witnesses but that there are other things that would be in the
6 universe of acceptable questions.

7 I think once you see where I'm drawing the line --
8 and I'll put that in the order -- it certainly would make
9 sense for Mr. Larios to try to contact these folks or other
10 people in his office who would know the extent of the
11 involvement and just find out if it's even worthwhile to have
12 a deposition.

13 I know that we're approaching the end of discovery.
14 I will allow time for the depositions to go forward, but if
15 these two individuals sign declarations saying, "All I did was
16 go to a court appearance, I didn't do anything else on this
17 case, I have no knowledge of any investigation or internal
18 discussions or whatever it is," hopefully, that person won't
19 have to sit.

20 There's still a question in my mind as to whether the
21 identities of people involved, including the ultimate
22 decision-maker, should be covered by the privilege, but I will
23 indicate that in the order and issue it shortly.

24 Are the depositions of those two individuals -- I
25 take it they're not actually scheduled for dates before

1 January 31st?

2 MR. STEFANICH: They are not scheduled for dates.
3 The fact discovery deadline is the end of February, too, but
4 the deps are not scheduled.

5 THE COURT: Okay. Why did I think it was the end
6 of -- oh, I see. It is February 29th and my own order.

7 MR. STEFANICH: Right.

8 THE COURT: Okay. So, hopefully, there will be an
9 opportunity to finish that. So I'll issue that order.

10 There's no further action, I take it, needed with
11 respect to the felony review folder? Any disputes about any
12 remaining redactions there have been resolved, correct?

13 MR. STEFANICH: Correct.

14 THE COURT: And I will set a further status date
15 before the February 29th deadline, maybe the third week of
16 February, to make sure that the additional depositions go
17 forward.

18 Laritza, if you can suggest a date and time.

19 THE CLERK: Yes, Judge. We can do February 27th at
20 10:30.

21 THE COURT: And, Mr. Larios, I don't necessarily
22 expect that you would be needed for that hearing.

23 Does that work for plaintiff's counsel?

24 MR. STARR: Yeah, I believe so, Your Honor, yes.

25 THE COURT: And for defense counsel?

1 MR. STEFANICH: Yes. Yes, Your Honor.

2 THE COURT: Very good.

3 And then, just to be clear then, so the motion --
4 plaintiff's motion to quash the subpoena for Mr. Woodland's
5 calls is denied subject to the modifications to the scope of
6 the subpoena discussed on the record. That will be confirmed
7 in the order.

8 The motion for a protective order for the depositions
9 is taken under advisement. As I said, I'll put into writing
10 what things I think are acceptable and which ones are not to
11 question these witnesses about and likely set a time frame for
12 the parties to confirm that in light of that, it's still
13 necessary to depose one or both of those attorneys.

14 MR. STARR: Your Honor, I would be remiss if I didn't
15 mention this, and I don't think this necessarily changes your
16 opinion, but you mentioned regarding the subpoena and the
17 motion to quash the subpoena that Ms. Sanders had no knowledge
18 of Red Dog. That's not represented in the record, and I don't
19 think defendants represented that as much.

20 What they represented was that she did not know that
21 Red Dog's real name was Albert Woodland. She certainly knows
22 Red Dog, and the calls they have demonstrate that extensively.

23 So I just wanted to clarify that point so that you're
24 aware that there is not a record that she does not -- she
25 didn't testify to that fact.

1 THE COURT: No. Yes. And I perhaps may have
2 overstated it.

3 My understanding from the briefing is that she knew a
4 person Red Dog, she didn't know Red Dog's real name, that it
5 was Woodland.

6 I thought that the briefing also suggested she'd
7 indicated that she didn't really know Red Dog all that well.
8 And then part of the defendants' position was that that is at
9 least called into question by the few dozen calls from
10 Mr. Woodland to Ms. Sanders, including some that took place
11 after Mr. Fletcher was released from custody.

12 Am I recalling that correctly from the briefing?

13 MR. STARR: Yes.

14 MR. STEFANICH: That's correct.

15 THE COURT: So that was my understanding that
16 informed my decision that I'll allow those calls to be
17 produced.

18 MR. STARR: Thank you, Your Honor.

19 THE COURT: Okay. Thank you all for answering my
20 questions this morning. I very much appreciate it. Have a
21 good day.

22 (Proceedings adjourned at 10:52 a.m.)

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C E R T I F I C A T E

I, Brenda S. Varney, certify that the foregoing is a complete, true, and accurate transcript from the record of proceedings on January 24, 2024, before the HONORABLE ANDREA R. WOOD in the above-entitled matter.

/s/Brenda S. Varney, CSR, RMR, CRR

January 26, 2024

Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

Date